

Local Government Employee-Management Relations Board E-Newsletter

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Board Secretary

On the Horizon

The next meeting of the Board will be held on Tuesday, January 13th through Thursday, January 15th, in Las Vegas. The agenda for this meeting is being issued on January 5th. During the meeting the Board will conduct two hearings. The first is Michael Turner v. Clark County School District, involving a terminated employee who, after an arbitration, was reinstated by the school district. The complaint alleges the school district knew the position to which the employee was reinstated was slated to be phased out and thus did not bargain in good faith.

The second case is Las Vegas City Employees Association and Val Sharp v. City of Las Vegas. Mr. Sharp was suspended after allegedly making several offensive comments about another City employee. He and the union allege the City had no right to discipline him because he was acting in his capacity as a union representative at the time any such statements may have been made. Therefore, any discipline of him could only be imposed by the union.

Inside This Issue

- 1 On the Horizon** - Learn about our upcoming meetings
- 1-2 Recent Decisions** – Read about significant decisions just issued by the Board
- 2 Did You Know?**
- 2 Public Hearing** – Read about a public hearing to be held on our regulations on January 13th
- 3 In the Queue** - See the cases that are waiting to be heard by the Board
- 3 Coming Soon** – Learn about more upcoming changes

Recent Decisions

*Please note that these summaries are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. The Board issued one notable decision in December:

A1-046091, Jarod Barto et al. v. City of Las Vegas (Item 799): This case involves twelve City of Las Vegas firefighter recruits, who began a training academy together in October 2012. On January 11, 2013, they took a hazardous materials awareness test. The State Fire Marshal, who scored the exams, noticed a number of irregularities.

At his request the City of Las Vegas conducted an investigation through its internal affairs group in the Department of Detention and Enforcement. The investigation concluded that a number of the recruits had cheated on the exam and that all had not answered investigator questions truthfully. So the day before the graduation ceremony, the City cancelled the graduation and thereafter non-confirmed the entire class on March 19, 2013.

The recruits filed a complaint against the City, claiming the City unilaterally changed the bargained-for terms of discipline by (1) not following the positive discipline program; (2) using investigators from outside the fire department; and (3) not giving the recruits a hearing.

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Recent Decisions (cont'd)

The Board first noted that a unilateral change occurs when a local government employer changes a term of employment that affects one of the mandatory subjects of bargaining, and does so without first bargaining with the recognized bargaining agent, City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 59 P.3d 1212 (2002). The Board also found that discipline procedures are a mandatory subject of bargaining. However, in this instance the Board held no unilateral change had occurred. Instead, the Board agreed with the City's defense, namely that language in Article 10-B of the CBA provided the terms for handling probationary employees, which trumped other language in the CBA. It reads: "Nothing in this Agreement interferes in any way with the City's right to discharge or discipline any employee prior to the successful completion of an initial probationary period."

Additionally, the Board found no evidence of retaliation. Finally, with respect to the claim that the recruits' liberty interests had been violated, the Board noted that the EMRB was not the proper forum to determine constitutional due process issues.

Did you know

the history behind the case numbers that we use? We don't. The case numbers have always started with a "A1-", followed by six numbers in sequence, but years ago those six numbers never began with "000001". The best story we have heard is that someone with the agency in its first year may have brought to the agency a numbering system used in California. Well no more! Based on a suggestion from Attorney Michael Langton, which the Board liked, beginning in 2015 all new cases will be numbered with the year, followed by a sequential number. The first case filed in 2015 will thus be 2015-001.

Public Hearing

On Tuesday, January 13th at 8:00 a.m., the agency will be holding a public hearing on various regulations. The set of proposed regulations, previously discussed at a workshop on December 3rd, would make the following changes:

- When filing any document with the agency we would only need the original. We would no longer require that four additional copies be filed.
- In lieu of mailing or personally dropping off a document for filing, persons would now be allowed to electronically file the document by submitting a .pdf attachment to an e-mail. The document would be file-stamped and the file-stamped copy would be e-mailed back to the person.
- The Commissioner would be allowed to grant extensions of time to file certain documents in lieu of waiting for Board approval. It is expected that the extensions could be granted the same day as the stipulation is filed.
- Clarifications in annual reporting requirements would be made so that the regulations better conform to our state law.

We thank everyone who either gave comments prior to or at the recent workshop. Anyone wishing to make written comments on the proposed regulation, which can be viewed on our website or e-mailed to you upon request, may do so prior to the public hearing. Alternatively, anyone may also offer oral comments at the public hearing. We welcome any and all comments.

If adopted by the Board on January 13th the regulations by law cannot take effect until 35 days thereafter, which would be February 17, 2015. Also, if and when the regulations are adopted, the agency will notify all those in our user community and will forward a form to those interested in electronically filing documents in the future (see bullet point number two above).

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. Below is a description of the current queue:

On February 10-12 the Board will meet in Las Vegas and hear two consolidated cases, A1-046054 and A1-046080, involving the North Las Vegas Police Supervisors Association and the City of North Las Vegas.

On March 10-12 the Board will hear two more cases: A1-046111, Justin Simo v. Henderson Police Officers Association, and A1-046123, Nye County Law Enforcement Association v. Nye County.

On April 7-9 the Board will hear either A1-046116, David O'Leary v. Las Vegas Metropolitan Police Department or A1-046120, IAFF, Local 1908 v. Clark County. Both cases have a settlement conference in January.

The following cases are waiting for the Board to deliberate and decide on the status of the case, including, but not limited to, dismissal of the case or the granting of a hearing on the complaint. Please note that the order listed below is not necessarily the order in which the cases will be heard:

In Las Vegas:

- A1-046102, North Las Vegas Police Supervisors Association v. City of North Las Vegas
- A1-046113, Education Support Employees Association and Police Officers Association of the Clark County School District v. Clark County School District
- A1-046119, Shannon D'Ambrosio v. Las Vegas Metropolitan Police Department
- A1-046128, City of Las Vegas v. Las Vegas Peace Officers Association
- A1-046130, SEIU, Local 1107 v. Clark County

In Northern Nevada:

- A1-046068, Elko County Employees Association v. Elko County

Coming Soon...

The agency is now updating its mediator/fact-finder list. This will become an annual occurrence. Based upon a suggestion at the recent open forum, we will be uploading our list, including resumes, to our new website as updates are received. If you know of any good mediators/arbitrators/fact-finders, please forward their names and contact information to use and we shall contact them to see if they would like to be added to our list. Once loaded to the website you may find this list to also be an alternate source of mediators and arbitrators for your grievance mediations and arbitrations.

We are still receiving collective bargaining agreements from the employee organizations. We are scanning them as they are received and will upload them to our new website – probably in January. We will notify you when this happens!

We recently asked our local governments to complete a voluntary survey on what preferences and incentives they may give to veterans. If you would like a copy of this document please e-mail us.

Finally, look for our first ever annual report, which will be e-mailed to you on January 13th. This report will also list our goals for the coming year!

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.